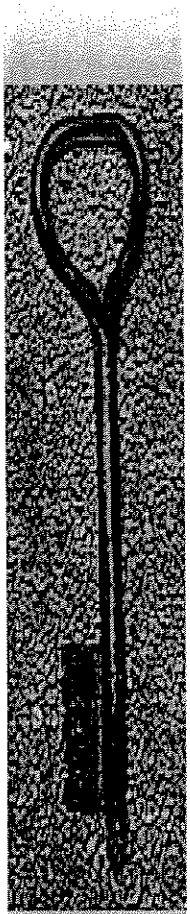

Mr. Mack Tiggart
Mound Correctional Facility
17601 Mound Road
Detroit, MI 48212

April 12, 2004



Michigan Supreme Court
Clerk's Office
PO Box 30052
Lansing, MI 48909

**RE: Proposed Amendments to court rules**
**Supreme Court ADM File No. 2003-04**

Dear Justices:

I'm too am writing to oppose the changes in the 6.500 motion for relief from judgment. I also respect this Honorable Court to allow inmates such as myself to comment on the proposed amendment. I am a laymen to the law. But, I understand when you're talking about putting a limitation on the time to file a 6.500 motion and the numbers of pages to prepare a brief it's manifestly unjust. In fact, there shouldn't never be a time limit on a person liberty.

I want to talk about the "CAUSE and PREJUDICE" rules of the former MCR 6.508(D) denying my previously motion under this rule: Just to give you an example of two of the issues I'd raised out of ten, issues ten years ago.

**ISSUE ONE:** A 12 gauge shotgun and three live rounds 12 gauge shotgun shells was recovered from my home. (T.T. pgs. 541-542). The actual shotgun was never recovered by the police. The state's firearm expert took the stand and testified that 20 gauge shotgun shells was founded at the scene of the crime. Those shells was fired from a 20 gauge shotgun. The firearm expert further testified, the 12 gauge shotgun that was recovered from Mr. Tiggart's home could not have been the murder weapon, and the three 12 gauge live rounds shotgun shells recovered from Mr. Tiggart's home was never fried. The prosecutor's insisted on admitting the 12 gauge shotgun and three 12 gauge shotgun shells into evidence. The court allowed the prosecutor to admitted those items into evidences. It was as follows:

[PROSECUTOR]

Q. I've had the court report mark as People's proposed #38 an item that is on evidence tag 767-250. I am going to hand this to you and asks you if you can tell the jury within your expertise what that is?
A. This is the double-barreled top break shotgun. It's a 12 gauge shotgun.
Q. That's a 12 gauge?
A. Yes sir. (T.T. pg. 678).
Q. Okay. Now, did you place anything else on evidence that day from the bedroom?

A. Yes, three shotgun shells. People's Exhibit Number #39 evidence tag 715-385 marked for identification.

Q. Ask you to open the contents thereof or take a look at the contents thereof and ask you if you can identify those, please?

A. It's three 12 gauge shotgun rounds.

Q. Okay. Are those fired or live 12 gauge shotgun rounds?

A. Live rounds.

Q. Where were they, sir?

A. They were on a nightstand in the bedroom. (T.T. 706-707).

During seven and half hours of deliberation the jury sent out a note wanted to review all the exhibits that had been admitted into evidence. The 12 gauge shotgun, and three live rounds 12 gauge shotgun shells was sent to the jury room at their requested. The Court Stated:

**[The Court].**

If you want to look at any or all of the exhibits that have been admitted into evidence, just write a note and we will provide them to you in the jury room. (T. T. pgs. 955-956)

**[The Court].**

The court should reflect that I have received two notes from the jury. One asks for all the exhibits and the verdict form which I did give to Them. (T. T. pgs. 958-959).

Allowing exhibit #38 (12 shotugn), exhibit #39 (shotgun shells), into the jury room while the jurors were in deliberation were "Highly Infammatory". Guess what, when this issues was raised on my 6.500 motion the lower court denied it stating that, I failed to show cause under MCR 6.508(D). This issue within it's self the merits truly out weight the "cause and prejudice".

**ISSUE TWO:** This issue is so unreal that it's hard to believe, that something like this could ever happen in our wonderful juridical system a system that is "Just-Us". During the middle of the trial at the end of the day the prosecutor called the defense witness at her home, and told her not to come in, not to show up. **PICTURE THIS:**

**[Prosecutor]**

There was a letter that was written, I think it's -- that the Court sent me a copy of and it was written I believe by Mr. Tiggart's sister whose name escapes me right now. But it indicated some information supplied by another lady, another lady who was suppose to be a defense witness. And Mr. Tiggart's sister said that the prosecutor told her not to come in, not to show up.

**[The Court]**

So we we'll know who we are talking about, for the record let the Court just indicate that the letter received in July postmarked July 9th is from Ms. Ruby Lee it's regarding Ms. Deborah Diggs. (S.T. pg. 4).

[Prosecutor]

And during the course of the trial I received a note from one of the deputies. I believe it was a female deputy. It said and it had I believe Mrs. Diggs name on it. And it had a phone number and it said this is one of your witnesses, she asked you to call her.

I looked at the name. **I didn't recognize the name from my witness list but I went upstairs after the day was through and I did call the number and talked to the person who I believe is the lady that's referred to there in that note by Ms. Lee.**

It became obvious during the course of my talking to this person that she was a person that, if she was to be a witness at all, would be a witness for the defense. She indicated to me that she had received a subpoena and I asked her had it been sent in the mail or personally delivered to her and she was wondering what she should do, when she was suppose to come in.

This took place --- I can't remember exactly how many days the trial went on but it took place somewhere in the middle towards the end of the trial. But I never ever told this woman don't come in, don't show up. I never ever said that to her. And I gave here the defense attorney's name and phone number and told her that she was possibly a defense witness and contact the defense attorney. So that's my position on that letter. (S.T. pgs. 5-6).

[Defense Attorney]

I did have a subpoena served -- I did have a subpoena mailed to Deborah Diggs. I do not recall having a conversation with her. I had discussed her possible testimony with my client only an she did not appear at trial.

I did not know anything about the conversations that the Prosecutor's had with her until the court sent me a copy really of the letter.

[The Court]
Okay. Anything further on that?
[The Prosecutor]
Nothing further on behalf of the People on that.
[The Court]
Okay. Are we prepared to proceed on the sentencing?
[The Prosecutor]
I am. (S.T. pg. 7).

Comprehending from the two issues stated above, the court should have gave me some relief. Take for instant, when the state's firearm expert testified, that the 12 gauge shotgun was not the murder weapon, and the three 12 gauge live rounds shotgun shells, was never fired, why would those items even be admitted into evidence, and be allowed to go to the jury room for 7 1/2 hours of deliberation? Clearly, ineffective assistant of counsel, judge abused of discretion. Also in issue two. One might say what would this witness

would have testified to or about. **THANK ABOUT IT!** The violation fall's on the prosecutor and the defense attorney. When the prosecutor looked at the note, checked his witness list and the defense witness name didn't appear on his list as being a witness for the prosecution, he should had as easy walked over to the defense table an handed the defense attorney the note. What was so important that the prosecutor had to called the defense witness at her home during the middle of a murder trial? This witness was already subpoenaed to appear in court to testify, so anything the prosecutor wanted to asks this witness he could have asks her in a court of law under oath. What we have here is a violation of ineffective assistant of counsel for failure to produce the witness after the witness was subpoenaed by the defense counsel. The prosecutor's violation resulted in; interfere with a defense witness, obstruction of justice, spoliation, sixth amendment right to compulsory process, and made a material witness unavailable.

If this proposal is to be amended, then the cause and prejudice must be remove from it's statistics. I also concur with Attorney, James Sterling Lawrence in his comments dated March 1, 2004, A-Q pertaining to the proposed amendment File No. 2003-04.

The courts should have fully appreciated the above issues that such post-appeal relief ought to been granted when "extraordinary" circumstances have been demonstrated -- otherwise, the salutary principle of finality will be badly undermined -- and that the burden is, where it ought to be, on the defendant to demonstrate an entitlement to relief, MCR 6.508(D). There ought be a great reluctance to set aside aged convictions, especially, convictions which were long ago left standing after full appellate review. However, the existence of MCR 6.500, et seq., is a recognition that there will be some cases where, to preserve the credibility of the criminal justice system, convictions entered and affirmed years earlier must be set aside. "Although the state's interest in finality is exceedingly strong..., it sometime must yield to the imperative of correcting a fundamental injustice," This happen to be one of those extraordinary cases.

## C O N C L U S I O N

It's apparently what Mr. Tiggart's has demonstrated did not entitled him to a new trial, the rules authorizing post-appeal relief ought be repealed. Since Mr. Tiggart's herein did not succeed, ten years ago no defendant will ever successfully invoke those rules, meaning that those rules are a hoax. If so, they impose a pointless burden on the courts. If petitions will never succeed, which is what will be said since Mr. Tiggart did not succeed, which it would be better to relieve the courts of the need to review them. Taxed courts attempting to cope with near-gridlock dockets would have one less diversion from their task. More significantly, repealing the rules, if they are pointless, would eliminate corrosive dishonesty. The law cannot be credible if it pretends to provide what it does not, for such pretense is fundamental dishonesty. To have strength, the law and its procedures must be honest.

Sincerely,

Mack Tiggart, #147662
/mt